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May 27, 1993

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of

DAVID A RINGER  
et al.

For Construction Permit for  
New FM Station on Channel 280A  
at Westerville, Ohio

) MM Docket No. 93-107

) File Nos. BPH-911230MA et al.

TO: Administrative Law Judge  
Walter C. Miller

**OPPOSITION TO MOTION TO ENLARGE ISSUES**

ASF Broadcasting Corporation ("ASF"), by its attorneys, hereby opposes the Motion to Enlarge Issues filed May 17, 1993 by Ohio Radio Associates, Inc. ("ORA").

ORA first seeks to have the Presiding Judge specify an issue to determine whether ASF's application violates Section 73.316 of the Rules, and if it is basically qualified to be a Commission licensee. As a basis for its request, ORA relies solely upon the ASF application, as amended on March 5, 1992, the same application and amendment that were before the Chief, Audio Services Division at the time this case was designated for hearing.

In the Hearing Designation Order, the Chief pointed out a number of minor deficiencies requiring amendment by various parties. Further information pursuant to Section 73.316 of the Rules was not among those deficiencies. Accordingly, the Chief

obviously did not feel any additional information was necessary. Further, directional FM Construction Permits typically are conditioned upon the permittee's supplying, with the license application, an actual measured antenna pattern, certified by a qualified engineer, as well as a certification by a licensed surveyor with respect to the proper mounting of the antenna.

ASF further submits that ORA has misread the meaning of the Presiding Judge in Memorandum Opinion and Order, FCC 93M-224, at para. 11 and note 3, released May 4, 1993. ASF believes that the Presiding Judge's reference therein was not to filing a repetitious Petition to Enlarge Issues, but only as to whether a comparison of seven applicants, as opposed to two, better serves the public interest.

On The Beach Broadcasting, FCC 93-211, released May 10, 1993, lends no support to ORA's position. In fact, its holding is directly contrary to ORA's argument. Notwithstanding that the applications involved in that proceeding were filed in 1985, long before the adoption of present Section 73.215, one of the applicants, Portola, attempted to take advantage of the directional antenna provisions of Section 73.215 by amendment. However, its amendment failed to provide the requisite contour protection to another station, causing the Presiding Judge to reject the amendment. The Commission specifically noted that the reason for the rejection was the applicant's failure to provide the requisite contour protection (para. 10). It was not rejected simply because the applicant was one of two mutually-exclusive applicants for the facility, essentially ORA's argument here. Any reasonable reading of On The Beach leads inescapably to the conclusion that had Portola demonstrated the requisite contour protection, its amendment would have been accepted.

Accordingly, ORA has advanced nothing new, either factual or legal, since its arguments were rejected by the Chief, Audio Service Division. Thus, the issue should not be added.

Wherefore, it is respectfully requested that the Motion to Enlarge Issues filed by Ohio Radio Associates, Inc. should be denied in its entirety for failure to plead with the specificity required by Section 1.229 of the Rules.

Respectfully submitted,

**ASF BROADCASTING CORPORATION**

By 

James A. Koerner  
Its Attorney

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**May 27, 1993**

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**CERTIFICATE OF SERVICE**

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing **OPPOSITION TO MOTION TO ENLARGE ISSUES** were sent this 27th day of May, 1993, via first class mail, postage prepaid to the following:

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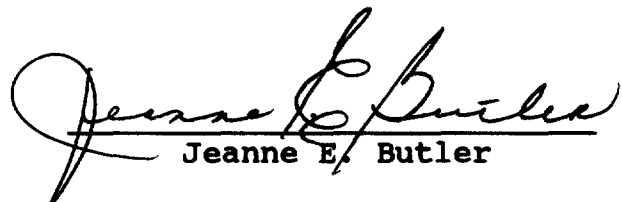
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